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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,830	12/01/2003	Carlos Augusto	100691.0001US1	3590

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EXAMINER	
MUNSON, GENE M	

ART UNIT	PAPER NUMBER
2811	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
10/725,830	C. AUGUSTO	
Examiner	Group Art Unit	
G. MUNSON	2811	

—Th MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-8, 11-20 is/are rejected.

☒ Claim(s) 9, 10 is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)–(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)–(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☒ Information Disclosure Statement(s), PTO–1449, Paper No(s). 3/3/04

☐ Interview Summary, PTO–413

☒ Notice of Reference(s) Cited, PTO–892

☐ Notice of Informal Patent Application, PTO–152

☐ Notice of Draftsperson's Patent Drawing Review, PTO–948

☐ Other _____

Office Acti n Summary

A more descriptive title is needed. The patent number needs to be inserted on page 1 of the specification.

Claim 17 is rejected under 35 USC 112, first paragraph. The "inverter", "logic gate" and 'memory cell" circuits are not clearly described and no circuit diagrams are provided to enable any person skilled in the art to make the circuits with the device of claim 16.

Claims 7 and 15 are rejected under 35 USC 112, second paragraph. In claim 7/(1-3), the tolerance of what is unclear; perhaps the dependence is wrong. There is an extra claim 15, which omits "insulator" after "gate". A new claim number is needed for the extra claim 15.

Claims 1-8, 11-17, 19 and 20 are rejected as double patenting of the non-statutory type over claims of the Augusto patent 6,674,099 which issued from parent application SN 09/889,815. Claims 1-8, 11-15, 19 and 20 read on the MISFET of the parent claims and would be double patenting. See MPEP 804. It would have been obvious to use the MISFET of the patent claims in known circuits (claims 16, 17).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 18 is rejected under 35 USC 102 as unpatentable as shown by Rao. See Figures 3, 8.

Claim 18 is rejected under 35 USC 102 as unpatentable as shown by the Augusto European Patent document, cited by applicant. See Figure 2a.

Claims 1, 2, 16 and 17 are rejected under 35 USC 102 as unpatentable as shown by Welch '584. See Figure 4, column 21, line 6, to column 23, line 8.

Claims 1, 2, 16 and 17 are rejected under 35 USC 102 as unpatentable as shown by Welch '636. See Figures 5, 7b; column 5, line 4, to column 6, line 19; column 13, line 30, to column 14, line 46; column 25, line 23, to column 26, line 48; column 27, lines 23-55; column 32, lines 53-62.

Saitoh et al and Augusto '977 are of record in parent application SN 09/889,815.

Claims 9 and 10 are objected to as dependent upon rejected claims but would be allowable over the art of record if each were put in completed form as independent claims including all limitations of claims 1, 9; 1, 10.

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01/14/05

Gene M. Munson

GENE M. MUNSON
EXAMINER
GROUP ART UNIT 2811